SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-111
District Docket No. XIV-2011-0461E

IN THE MATTER OF	:	
	:	Decision
JEFFERY L. KRAIN	:	
AN ATTORNEY AT LAW	:	

Argued: September 19, 2013

Decided: November 21, 2013

Melissa Ann Czartoryski appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us on a recommendation for a nine-month suspension filed by the District IIIB Ethics Committee (DEC). The two-count complaint, filed by the Office of Attorney Ethics ("OAE"), charged respondent with having violated RPC 5.3(a), (b), and (c) (failing to supervise a nonlawyer employee), RPC 5.4(a) (sharing legal fees with a nonlawyer), RPC 5.5(a)(2) (assisting a nonlawyer in the unauthorized practice of law), and RPC 7.2(c) and RPC 7.3(d) (compensating another for recommending

the lawyer's services) (count one), as well as RPC 8.4(b) (engaging in criminal conduct that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer)[1] and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation) (count two).

The OAE urged us to impose at least a three-month suspension. Respondent, in turn, asked for either an admonition or a reprimand. We determine that he should receive a six-month suspension.

Respondent was admitted to the New Jersey bar in 1978 and to the Pennsylvania bar in 1977. On December 4, 2009, following a motion for reciprocal discipline, he was suspended for one year, effective November 18, 2008, the date on which he had been suspended for four years in the Commonwealth of Pennsylvania. In re Krain, 210 N.J. 120 (2009).

In that case, despite having been placed on inactive status, in 2000, for failing to comply with the requirements of the Pennsylvania Rules of Continuing Legal Education, respondent engaged in the practice of law in 339 cases in Pennsylvania, between 2000 and 2008. In the Matter of Jeffery L. Krain, DRB 09-052 (July 23, 2009) (slip op. at 4-6). In addition, in

[1] On the presenter's motion at the ethics hearing, the RPC 8.4(b) charge was dismissed.

connection with a Philadelphia restaurant that respondent owned and operated, he entered a guilty plea to five counts of willful failure to file sales tax returns, five counts of willful failure to remit sales tax, three counts of willful failure to file employer withholding tax returns, and three counts of failure to pay withheld state income tax, for which a sentence of probation and fines was imposed (Id. at 7).

Respondent was reinstated in 2010. In re Krain, 201 N.J. 411 (2010).[2]

The facts in this matter are not contested. Indeed, respondent admitted that he had violated several of the RPCs with which he was charged. Essentially, respondent had no knowledge of immigration law, hired a paralegal who was experienced in that area, agreed to pay her fifty percent of the legal fees that she generated, failed to supervise her, assisted her in the unauthorized practice of law, and issued Internal Revenue Service (IRS) Form 1099 earnings records that understated the amount of her income.

Specifically, in 2004, after practicing personal injury law in Pennsylvania for twenty-six years, respondent decided to branch out to immigration law. Through mutual acquaintances, he

[2] For reasons that are not clear, the reinstatement order was published before the suspension order.

met Maria James, a paralegal who spoke Spanish and was experienced in immigration law. Although respondent knew "literally" nothing about this field of law, James offered to mentor him until he "got up to speed".

Before hiring James, respondent learned from her that she had previously been indicted on charges of mortgage fraud and engaging in the unauthorized practice of law. Although respondent did not have information about these matters, he understood that the unauthorized practice of law charge had been dismissed.

James operated a tax preparation business in Brigantine. In 2005, respondent maintained a law office in the same building in Brigantine, which was seventy miles from his home/law office in Moorestown. Respondent visited the Brigantine office two to three times per week, sometimes for as little as an hour at a time.

Respondent agreed to pay James fifty percent of the legal fees that he received from immigration clients, all of whom were billed on a fixed fee basis. He did not advertise or make any effort to obtain immigration clients on his own. Through James' connections in the community and from her tax business, she generated all of the immigration legal fees for respondent's law practice.

Respondent asserted that, if James had not had the connections that she did, he would not have shared legal fees with her, but would have paid her only a salary. According to respondent, in 2008, James had generated ninety to ninety-five percent of his revenue. Respondent denied that he had paid James to solicit business.[3] In 2005, 2007, 2008, 2009, and 2010, James' earnings exceeded those of respondent. He admitted that he had improperly shared fees with James.

From 2004 to 2008, respondent relied on James' expertise in immigration law, until he gained sufficient knowledge and experience by attending seminars and performing legal research. James was responsible for interviewing clients, completing forms, and compiling exhibits, while respondent handled court appearances. Respondent authorized James to prepare and to sign his name on retainer agreements, correspondence, and pleadings, as long as she first contacted him and read to him the contents of those documents. With respondent's authority, James also obtained information from clients, gave them advice, and collected legal fees from them.

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[3] The presenter acknowledged that, although James generated "a lot of business," the complaint did not charge respondent with having used a "runner," an individual who, in exchange for compensation, solicits business for a lawyer. In New Jersey, a person who knowingly acts as a runner or uses a runner commits a third-degree crime. N.J.S.A. 2C:21-22.1.

Respondent conceded that, at least initially, he depended on James' advice as to whether to accept a case and how to proceed with it. He further admitted that, on occasion, the first time he met a client was at that client's immigration hearing.

Respondent acknowledged that he failed to supervise James, that he never reviewed documents that she had prepared, that most of his contact with her was via telephone, that she practiced law without a license, and that she exceeded the limits of permissible paralegal activity. At the disciplinary hearing, however, respondent confessed that he did not know what constituted the unauthorized practice of law by a paralegal.

Moreover, respondent acknowledged that, at James' request, he had prepared inaccurate 1099 forms that reflected lower income for her. The following chart compares the amounts that respondent reported with James' actual earnings:

Year	1099	Actual Earnings
2004	$ 25,681	$ 66,000
2005	$ 33,800	$ 94,975
2006	$ 38,000	$ 84,333
2007	$ 42,835	$112,630
2008	$ 51,200	$123,621
2009	$ 16,121	$ 50,420
2010	$ 65,187	$ 65,187
2011	$ 4,000	$ 4,000
Total	$276,824	$601,166

According to respondent, John Kain, his accountant, had advised him that he was permitted to underreport James' earnings on the 1099 forms. Kain, however, denied that he had even discussed the issue with respondent, let alone authorized him to do so. He testified that respondent did not receive a tax benefit from underreporting James' earnings. According to respondent, James had assured him that she had reported her actual income on her tax returns. Nevertheless, respondent acknowledged that issuing incorrect earnings statements was wrong because, as an attorney, he was obligated to be accurate.

At the ethics hearing, respondent conceded that he should have challenged James' representation that she was reporting her entire income and that he should have issued accurate 1099 forms to her.

Respondent also admitted that he often received legal fees in cash from his clients, failed to deposit the legal fees in his attorney business account, and paid James in cash.[4]

Additionally, on respondent's corporation income tax returns filed from 2004 to 2009, he understated the amount of paralegal costs that he had incurred. Kain told the hearing

[4] The complaint did not charge respondent with violating the recordkeeping rules by failing to deposit legal fees in his attorney business account.

panel that all of the entries on respondent's tax returns were derived from figures that he had received from respondent.

Respondent was not the first attorney who shared legal fees with James. Before respondent hired her, she had worked in a similar capacity for Paul Melletz, an attorney who had a general practice, including immigration. In 2001, James indicated to Melletz, who had previously represented her, that she had developed an interest in immigration law and proposed working for him as an immigration paralegal. Melletz hired James as an independent contractor, agreeing to pay her fifty percent of the legal fees paid by immigration clients. James continued to work for Melletz until 2004. In 2009, he again hired her. According to Melletz, he did not realize, until 2010, when the case of In re Burger, 201 N.J. 120 (2010), was decided, that his fee arrangement with James violated RPC 5.4(a).[5] Melletz immediately ended his relationship with James. In 2012, he received an admonition for improperly sharing fees with James. In the Matter of Paul R. Melletz, DRB 12-224 (November 16, 2012).

Several months later, immigration officers contacted Melletz, indicating that they were investigating James. Upon seeing a pattern of similar facts appearing on immigration

[5] Burger paid a paralegal fifty percent of the fees generated by her referrals. In the Matter of Martin Burger, DRB 09-243 (December 3, 2009) (slip op. at 2-3).

applications, the immigration officials were investigating whether James had fabricated those facts so that the clients would qualify for permanent resident status. Melletz was not aware of any charges having been filed, as a result of the investigation.

In 2010, respondent found out that he, too, was being investigated by immigration officials. As a result of advice from the Assistant United States Attorney and from his own counsel, respondent reported to the OAE both the immigration investigation and his improper fee-sharing. After learning of the investigation, respondent discovered from various clients that James had been counseling them to misrepresent facts so that they would be deemed to have met immigration eligibility requirements. Although respondent became aware of these allegations in July 2010, he waited until March 31, 2011 to end his association with James. Respondent opined that, because the clients had been evaluated by an independent psychologist, they would have been deemed eligible, regardless of the misrepresentations on their applications.

When the OAE investigator attempted to interview James, her counsel directed her to refrain from answering any of the OAE's questions, asserting her Fifth Amendment right against self-incrimination. Counsel noted that, although James had not been

charged with a crime, she was the subject of a federal investigation.

As indicated previously, the OAE urged the hearing panel to recommend at least a three-month suspension. Without specifying a specific level of discipline, respondent suggested to the hearing panel that he should not be suspended. In a brief filed with us, respondent asked for "discipline similar to that of Paul Melletz" (an admonition). At oral argument before us, respondent suggested that a reprimand would be appropriate.

The DEC found that, by leaving James unsupervised in an office that respondent visited, at most, three days a week for a few hours, respondent violated RPC 5.3(a) and (b). Because the DEC did not find clear and convincing evidence that James engaged in conduct that would constitute a violation of the RPCs if engaged in by a lawyer, it did not find a violation of RPC 5.3(c).

The DEC also found that respondent assisted James in the unauthorized practice of law. Although the DEC acknowledged that a nonlawyer employee may perform tasks normally constituting the practice of law, as long as the employee is supervised by an attorney, it pointed out that respondent failed to supervise James. Moreover, the DEC found that, at least initially,

respondent knew nothing about immigration law and was entirely dependent on James, in conducting that aspect of his practice.

The DEC determined that, by dividing fees with James in the manner of an equal partner, respondent compensated her for referring clients to him, a violation of RPC 7.2(c) and RPC 7.3(d).

Finally, the DEC found that respondent violated RPC 8.4(c) by issuing IRS 1099 Forms, for six years, that substantially understated James' earnings. Although respondent contended that he derived no benefit from his actions, the DEC reasoned that, by acceding to James' request, respondent avoided the risk that she might take her lucrative source of business elsewhere.

The DEC considered, as aggravating factors, respondent's one-year reciprocal discipline, his lack of candor in denying any knowledge that it was impermissible to misrepresent James' earnings to the IRS, and the repeated nature of his underreporting James' income, annually, for six years. The DEC found no mitigating factors.

The DEC recommended a nine-month suspension -- three months for the violations alleged in count one of the complaint and six months for the count two violations.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent was guilty of unethical conduct is supported by clear and convincing evidence.

Respondent admitted entering into an improper fee-sharing arrangement with James, a nonlawyer, whereby he paid her fifty percent of all fees received from immigration clients. RPC 5.4(a was designed to preserve and to ensure an attorney's independent professional judgment. In In re Weinroth, 100 N.J. 343 (1985), the Court discussed the rationale for the predecessor to RPC 5.4(a):

> The prohibition of the Disciplinary Rule is clear. It simply forbids the splitting or sharing of a legal fee by an attorney with a lay person, particularly when the division of the fee is intended to compensate such a person for recommending or obtaining a client for the attorney. The policy served by this Disciplinary Rule is to ensure that any recommendation made by a non-attorney to a potential client to seek the services of a particular lawyer is made in the *client's* interest, and not to serve the business impulses of either the lawyer or the person making the referral; it also eliminates any monetary incentive for transfer of control over the handling of legal matters from the attorney to the lay person who is responsible for referring in the client. The Disciplinary Rule also serves to discourage overzealous or unprofessional solicitation by denying compensation to a lay person who engages in such solicitation on behalf of a lawyer, or even as to another lawyer unless the latter has also rendered legal services for the client and the fee that is shared reflects a fair division of those services.

> For these policies to succeed, both indirect as well as direct fee-sharing must be banned so as fully to preserve the integrity of attorney-client relations.
>
> [Id. at 349-50; citations omitted.]

In addition to improperly sharing fees with James, respondent failed to supervise her. Initially, he relied on her to "mentor" him, until he became familiar with immigration law, a process that required about four years, from 2004 to 2008. During that time, James interviewed clients, completed forms, compiled exhibits, and signed documents on respondent's behalf, such as pleadings, correspondence, and retainer agreements. We are aware that paralegals are permitted to engage in conduct that would otherwise constitute the unauthorized practice of law, as long as they are supervised by attorneys. See In re Opinion No. 24, 128 N.J. 114, 123 (1992). Here, however, respondent did not -- and, indeed, could not -- supervise James because he depended on her to operate his immigration practice. He admitted that he relied on her expertise to determine whether to accept a case and, if so, how to proceed with it.

Even after respondent achieved sufficient experience and knowledge to represent immigration clients without James' assistance, he permitted her to handle matters unsupervised. He visited the Brigantine office only two to three times per week,

never reviewed documents that she had prepared, and admitted that James had engaged in the unauthorized practice of law.

Respondent, thus, violated RPC 5.3(a) and (b) by failing to supervise James and RPC 5.5(a)(2) by assisting her in the unauthorized practice of law.

As previously noted, the DEC dismissed the charge that respondent violated RPC 5.3(c), which imposes responsibility on a lawyer for conduct by a nonlawyer that would constitute a violation of the RPCs, if engaged in by a lawyer. Respondent, however, admitted that James had counseled clients to misrepresent the facts on their immigration applications to enhance their odds of attaining a favorable outcome. We, thus, find that respondent violated RPC 5.3(c) as well. Pursuant to RPC 5.3(c) (lawyer is responsible for the conduct of a nonlawyer employee that would violate the Rules of Professional Conduct if engaged in by a lawyer), we find respondent guilty of an additional violation of RPC 8.4(c), based on James' counseling clients to make misrepresentations on immigration applications.

The complaint charged respondent with having violated both RPC 7.2(c) and RPC 7.3(d) for compensating James for recommending his services. In prior decisions, we have determined that RPC 7.2(c) is not applicable in these types of cases because that rule addresses attorney advertising matters.

The Court has not disagreed. See, e.g., In re Tomar, et al., 196 N.J. 352 (2008); In re Fusco, 197 N.J. 428 (2007) and In re Macaluso, 197 N.J. 427 (2007 (companion cases); and In re Gonzalez, 189 N.J. 203 (2007). We, thus, dismiss the charge that respondent violated RPC 7.2(c). We find that, by compensating James for recommending his employment by a client, he violated RPC 7.3(d).

Finally, respondent violated RPC 8.4(c) by issuing IRS Form 1099 statements to James that substantially underreported her income. He admitted that he did so every year for six years. He also inaccurately reported his paralegal costs on his corporation income tax returns.

In sum, we find that respondent improperly shared fees with James, a nonlawyer; failed to supervise her; assisted her in the unauthorized practice of law; paid her compensation for recommending his employment by clients; and underreported her income to the IRS, all in violation of RPC 5.3(a), (b) and (c), RPC 5.4(a), RPC 5.5(a)(2), RPC 7.3(d) and 8.4(c).

In cases of attorneys sharing fees with nonlawyers, the discipline has ranged from an admonition to a lengthy suspension, depending on the severity of the lawyer's conduct, the presence of other, serious violations, and the lawyer's ethics history. See, e.g., In the Matter of Paul R. Melletz,

supra, DRB 12-224 (November 16, 2012) (admonition for attorney who hired a paralegal for immigration matters as an independent contractor and, for a few years, evenly divided the flat fee charged to immigration clients; mitigation included the attorney's lack of awareness that the fee-sharing arrangement was unethical, his termination of the arrangement as soon as he learned of its impropriety, and his previously unblemished history of forty-nine years); In the Matter of Ejike Ngozi Uzor, DRB 12-075 (May 29, 2012) (admonition imposed where, over a four-month period, attorney permitted a loan-modification entity, owned by nonlawyers, to operate under his law firm name and shared fees charged to the loan-modification clients; the attorney also violated RPC 5.4(d)(3) (prohibiting a nonlawyer from exercising control over the professional judgment of the lawyer) by allowing the nonlawyers to administer "law firm finances" through the attorney's business account; mitigation included the attorney's inexperience at the time of the misconduct (he had been admitted to the bar only months earlier), his short-term involvement with the entity, the immediate termination of the relationship once he realized its impropriety, and his protection of the entity's clients from harm by working without compensation and by contributing his own funds to pay former staff to complete open files); In the Matter

of Geno Saleh Gani, DRB 04-372 (January 31, 2005) (admonition for attorney who contracted with a Texas organization to develop a New Jersey practice to prepare living trusts, made misleading communications about his services, engaged in other advertising violations, shared legal fees with non-attorneys, and assisted others in the unauthorized practice of law; mitigating factors considered were the attorney's otherwise unblemished sixteen-year record, his contrition and remorse, his cessation of the improper advertising, the termination of his relationship with the Texas company, his refusal to accept referrals from New Jersey clients, the lack of harm to clients, the character letters submitted on his behalf, the passage of time, and the one-year duration of his practice in New Jersey); In re Burger, supra, 201 N.J. 120 (reprimand for attorney who paid a paralegal employee fifty percent of the legal fees generated by immigration cases that the paralegal referred to the attorney; we determined that the employee's earnings, both from the fee shares and her weekly salary, were not excessive for the position of a paralegal/secretary); In re Agrapidis, 188 N.J. 248 (2006) (reprimand imposed where, over a four-year period, attorney shared fees with nonlawyer employees on twelve occasions by paying them a percentage of legal fees received from clients whom the employees had referred to the attorney;

Agrapidis was not aware of the prohibition against fee-sharing and viewed the payments as "bonuses"); In re Gottesman, 126 N.J. 376 (1991) (attorney reprimanded for compensating his paralegal/investigator by paying him fifty percent of his legal fees; the attorney also assisted the employee in the unauthorized practice of law; although Gottesman believed the fee share arrangement was permissible because his former firm had engaged in the same practice, the Court found that his ignorance of the disciplinary rules was not a defense to the ethics charges); In re Weinroth, supra, 100 N.J. 343 (reprimand for attorney who shared his legal fees with a state senator as a reward for introducing the attorney to a prospective client); In re Marcus, 213 N.J. 493 (2013) (censure for attorney who paid nonlawyer employees a percentage of fees received from clients whom they referred to the attorney; Marcus had been reprimanded three times for unrelated infractions consented to a censure); In re Lardiere, 200 N.J. 267 (2009) (attorney censured for improperly sharing fees with a company that retrieved surplus funds from sheriffs' sales of foreclosed properties; the attorney also engaged in recordkeeping improprieties and failed to cooperate with disciplinary authorities); In re Macaluso, supra, 197 N.J. 477 (censure imposed on attorney, who, as a nominal partner, participated in prohibited compensation

arrangement with employee and failed to report the controlling partner's misconduct); In re Fusco, supra, 197 N.J. 428 (companion case to Macaluso) (attorney suspended for three months for paying a nonlawyer claims manager both a salary and a percentage of the firm's net fee recovered in personal injury matters that were resolved with the manager's "substantial involvement;" the claims manager received a larger percentage of the firm's fees in cases that he had referred to the firm; other infractions included failure to supervise nonlawyer employees and failure to report another lawyer's violation of the RPCs); In re Malat, 177 N.J. 506 (2003) (three-month suspension imposed on attorney who entered into an arrangement with a Texas corporation to review various estate-planning documents on behalf of clients, for which the corporation paid him; the attorney had a previous reprimand and a three-month suspension); In re Carracino, 156 N.J. 477 (1998) (six-month suspension for attorney who agreed to share fees with a nonlawyer, entered into a law partnership agreement with a nonlawyer, engaged in a conflict of interest, displayed gross neglect, failed to communicate with a client, engaged in conduct involving misrepresentation, and failed to cooperate with disciplinary authorities); In re Moeller, 177 N.J. 511 (2003) (one-year suspension for attorney who entered into an arrangement with a

Texas corporation (AES) that marketed and sold living trusts to senior citizens, whereby he filed a certificate of incorporation in New Jersey for AES, was its registered agent, allowed his name to be used in its mailings and was an integral part of its marketing campaign, which contained many misrepresentations; although the attorney was compensated by AES for reviewing the documents, he never consulted with the clients about his fee or obtained their consent to the arrangement and assisted AES in the unauthorized practice of law, misrepresented the amount of his fee, and charged an excessive fee); and In re Rubin, 150 N.J. 207 (1997) (in a default matter, attorney suspended for one year for assisting a nonlawyer in the unauthorized practice of law, improperly dividing fees with the nonlawyer without the client's consent, engaging in fee overreaching, violating the terms of an escrow agreement, and making misrepresentations to the client about a real estate transaction and about his fee).

Typically, attorneys who violate RPC 7.3(d) have done so either in conjunction with the fee-sharing proscribed by RPC 5.4(a) (Burger, Agrapidis, Marcus, and Gottesman), or have used a runner, a factor not present here.

Attorneys who fail to supervise nonlawyer staff are generally admonished or reprimanded. See, e.g., In re Bardis, 210 N.J. 253 (2012) (admonition imposed; as a result of the

attorney's failure to reconcile and review his attorney records, an individual who helped him with office matters was able to steal $142,000 from his trust account, causing a shortage of $94,000; mitigating factors were the attorney's deposit of personal funds to replenish the account, numerous other corrective actions, his acceptance of responsibility for his conduct, his deep remorse and humiliation for not having personally handled his own financial affairs, and the lack of a disciplinary record); In the Matter of Douglas B. Hanna, DRB 10-191 (September 28, 2010) (admonition for attorney who improperly delegated his recordkeeping duties to a bookkeeper who used the office's credit card for her own benefit and embezzled $76,000 in trust funds; the attorney also permitted a nonlawyer employee to sign trust account checks; the attorney's impeccable record of forty years was viewed as mitigation); In re Mariconda, 195 N.J. 11 (2008) (admonition for attorney who delegated his recordkeeping responsibilities to his brother, a paralegal, who forged the attorney's signature on trust account checks and stole $272,000 in client funds); In the Matter of Brian C. Freeman, DRB 04-257 (September 24, 2004) (attorney admonished for failing to supervise his paralegal, who also was his client's former wife, which resulted in paralegal's forging client's name on the retainer agreement and, later, on a release

and a $1000 settlement check in one matter and on a settlement check in another matter; the funds were never returned to the client; mitigating factors included the attorney's clean disciplinary record, and the steps he took to prevent a reoccurrence); In the Matter of Lionel A. Kaplan, DRB 02-259 (November 4, 2002) (attorney admonished for failure to supervise his bookkeeper, which resulted in recordkeeping deficiencies and the commingling of personal and trust funds; mitigating factors included the attorney's cooperation with the OAE, including entering into a disciplinary stipulation, his unblemished thirty-year career, the lack of harm to clients, and the immediate corrective action that he took); In re Deitch, 209 N.J. 423 (2012) (reprimand imposed; due to the attorney's failure to supervise his paralegal-wife and also his poor recordkeeping practices, $14,000 in client or third-party funds was invaded; the paralegal-wife stole the funds by negotiating thirty-eight checks made out to herself by either forging the attorney's signature or using a signature stamp; no prior discipline); In re Boyajian, 202 N.J. 333 (2010) (reprimand issued for attorney who engaged in the business of collecting debts owed to his law firm's clients and in the process did not properly supervise his lawyer and nonlawyer employees who, for a period of two years and on at least ten occasions, operated in

violation of the Fair Debt Collections Practices Act); In re Marin, 189 N.J. 207 (2007) (attorney reprimanded for failure to supervise his nonlawyer brother who worked as his office manager and who pleaded guilty to a one-count information charging him with conspiracy to commit mortgage fraud through the use of interstate wire transmission; specifically, the brother impersonated the attorney and held himself out as a lawyer; the brother's actions included issuing false attorney escrow letters regarding non-existent deposits, creating false second mortgages purporting to represent loans from sellers to purchasers, and preparing "false and fraudulent" settlement statements that did not truthfully describe the receipt and disbursement of funds; the attorney also misrepresented on a HUD-1 form that he had received a real estate deposit and, in another real estate transaction, was guilty of gross neglect and a conflict of interest; no prior discipline since 1989 bar admission); In re Murray, 185 N.J. 340 (2005) (reprimand for failure to supervise non-attorney employees, which led to the unexplained misuse of client trust funds and to negligent misappropriation; the attorney also committed recordkeeping violations); In re Riedl, 172 N.J. 646 (2002) (reprimand for attorney who failed to supervise his paralegal, allowing the paralegal to sign trust account checks; the attorney also grossly neglected a real

estate matter by failing to secure a discharge of mortgage for eighteen months after it was satisfied); and In re Bergman, 165 N.J. 560 (2000), and In re Barrett, 165 N.J. 562 (2000) (companion cases; attorneys reprimanded for failure to supervise secretary/bookkeeper/office manager who embezzled almost $360,000 from the firm's business and trust accounts, and from a guardianship account; the attorneys cooperated with the OAE, hired a CPA to reconstruct the account, and brought their firm into full compliance with the recordkeeping rules; a bonding company reimbursed the losses caused by the embezzlement).

Here, respondent's violation of the fee-sharing rule most resembles that of the attorneys in Melletz (admonition) and Burger (reprimand), both of whom also paid a paralegal fifty percent of the fees received in immigration cases that the paralegal referred to them. In numerous other respects, however, respondent's conduct was more serious. In addition to the fee-sharing, respondent assisted James in the unauthorized practice of law, paid her compensation for recommending his services, and failed to supervise her. Respondent also misrepresented her income on 1099 forms submitted to the IRS, during a six-year period.

We find other aggravating factors present here. Unlike Melletz, respondent did not immediately discontinue his

relationship with James, when he discovered that it was improper. Although respondent learned, in 2010, that he and James were being investigated by immigration officials and that James had been counseling various clients to misrepresent facts on their immigration documents to meet eligibility requirements, he did not end his association with James until March 31, 2011. Also, unlike Melletz and Burger, respondent does not have an unblemished disciplinary history. As noted above, he was suspended for one year, following a four-year suspension in Pennsylvania for appearing in 339 cases, while he was on inactive status, and for pleading guilty to numerous sales tax violations. It is troubling that, having already committed tax infractions, respondent failed to learn from prior mistakes and issued false 1099 forms on six occasions.

Moreover, unlike Melletz and Burger, respondent has not acknowledged his wrongdoing. In his brief filed with us, respondent argued that the nature of immigration practice requires "highly qualified and self-motivated paralegals" and that the DEC faulted him for hiring a paralegal who had more knowledge and skills than he did. Respondent fails to understand the distinction between employing an experienced paralegal and turning over his practice to that employee, to the extent that she was able to counsel clients to make misrepresentations on

their immigration documents. Furthermore, despite his admission, at the ethics hearing, that he had failed to supervise James, and despite his admission, during an OAE interview, that he had assisted her in the unauthorized practice of law, he denied, in his brief, that he had done so, asserting that she had been responsible for administrative tasks, while he handled the litigation duties.

In addition, unlike Burger, who compensated his employee in line with the income typically received by paralegals, James' compensation was excessive, averaging more than $85,000 per year and, at times, exceeding his own income.

As to the false 1099 forms, respondent blamed his accountant for issuing the inaccurate documents, despite Kain's testimony that he had received the data from respondent. Respondent also argued that the subject is not properly before us because it "is an agency matter that has yet to become an issue." Respondent's argument is not clear and, in addition, was not raised before the DEC.

In mitigation, we considered the fact that respondent reported his conduct to the OAE.

Based on the totality of respondent's actions and the aggravating and mitigating factors discussed above, we determine

that a six-month suspension is the appropriate quantum of discipline in this matter.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: Isabel Frank
Isabel Frank
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Jeffrey L. Krain
Docket No. DRB 13-111

Argued: September 19, 2013

Decided: November 21, 2013

Disposition: Six-month suspension

Members	Disbar	Six-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost		X				
Baugh		X				
Clark		X				
Doremus		X				
Gallipoli		X				
Yamner		X				
Zmirich		X				
Total:		7				

Isabel Frank
Acting Chief Counsel